

RECORDATION NO. 8152 Filed & Recorded

DEC 8 1975 8 21 PM

INTERSTATE COMMERCE COMMISSION

O'BRIEN, HALL, SAUNDERS
BARRISTERS & SOLICITORS

DEC 22 1975 - 3 25 PM

TABLE OF CONTENTS

INTERSTATE COMMERCE COMMISSION

PARTIES.....	1
PREAMBLE.....	2
ARTICLE I - DEFINITIONS AND INTERPRETATION.....	2
Section 1.1 Definitions.....	2
1.2 Interpretation.....	10
ARTICLE II - REPRESENTATIONS AND WARRANTIES.....	11
Section 2.1 Lessor's Representations and Warranties..	11
2.2 Exclusion by Lessor of all Other Representations and Warranties.....	11
2.3 Lessee's Representations and Warranties..	12
ARTICLE III - TERMS, RENTAL AND RELATED PROVISIONS.....	13
Section 3.1 Lease.....	13
3.2 Term.....	13
3.3 Option to Extend Term.....	13
3.4 Rental.....	14
3.5 Place of Payment.....	15
3.6 Overdue Payment.....	15
3.7 No Right to Compensate.....	15
3.8 Option to Purchase.....	16
3.9 Overholding.....	18
ARTICLE IV - PROVISIONS RESPECTING THE ROLLING STOCK....	20
Section 4.1 Ownership.....	20
4.2 Marking of the Rolling Stock.....	20
4.3 Risk.....	22
4.4 Lessee's Acknowledgements.....	22
4.5 Event of Loss.....	23
4.6 Parting with Possession, Assignment and Subletting.....	26
4.7 Return of Rolling Stock upon Default.....	28
4.8 Return of Rolling Stock Upon Expiration of Term.....	29
4.9 Terminal Disposition.....	31
4.10 Alterations.....	32
ARTICLE V - PROCEDURES.....	34
Section 5.1 Notices.....	34
5.2 Proofs of Loss.....	34

5.3	Conditions of Sale or Transfer.....	35
5.4	Assignment of Warranties.....	36
5.5	Fair Market Value Determination.....	36
ARTICLE VI - LESSEE'S COVENANTS.....		38
Section	6.1 To Indemnify.....	38
	6.2 To Pay Taxes.....	41
	6.3 To Keep Free of Adverse Liens.....	41
	6.4 To Maintain.....	41
	6.5 To Give Further Assurances.....	42
	6.6 To Furnish Financial Information.....	42
	6.7 To Comply with Governmental Requirements.....	42
	6.8 To Insure in Certain Cases.....	43
	6.9 To Maintain Record.....	44
ARTICLE VII - LESSOR'S COVENANTS AND RIGHTS.....		45
Section	7.1 Quiet Enjoyment.....	45
	7.2 Not To Subject The Rolling Stock to An Adverse Lien.....	45
	7.3 Right To Inspect.....	45
ARTICLE VIII - DEFAULT.....		46
Section	8.1 Events of Default.....	46
ARTICLE IX - REMEDIES ON DEFAULT.....		48
Section	9.1 To Take Possession of Rolling Stock, Sell and Claim Damages.....	48
	9.2 Lessor's Option to Terminate.....	50
	9.3 Remedying Defaults.....	50
	9.4 Remedies Cumulative.....	50
	9.5 Costs and Disbursements.....	50
	9.6 No Merger in Judgment.....	51
ARTICLE X - WAIVERS.....		51
Section	10.1 Conditional Sales Act and Seizures Act - Alberta.....	51
	10.2 Conditional Sales Act - British Columbia	52
	10.3 Limitation of Civil Rights Act - Saskatchewan.....	52
	10.4 Civil Code - Quebec.....	52
	10.5 General Waiver.....	52
ARTICLE XI - MISCELLANEOUS PROVISIONS.....		53
Section	11.1 Successors and Assigns.....	53
	11.2 Forbearance and Indulgence.....	53
	11.3 Headings.....	53
	11.4 Effective Date.....	54
	11.5 Entire Transaction.....	54

11.6 Severability.....	54
11.7 Proper Law.....	54

EXECUTION.....	55
SCHEDULE "A".....	56
SCHEDULE "B".....	57

DEC 22 1975 8 23 PM

INTERSTATE COMMERCE COMMISSION

Lease Agreement made at the City of Montreal in the
Province of Quebec, as of the 1st day of December, 1975.

BETWEEN:

CANADIAN NATIONAL RAILWAY
COMPANY, a corporation
incorporated by special
act of the Parliament of
Canada (hereinafter
called "Lessee"), having
its Head Office in the
City of Montreal in the
Province of Quebec,
herein acting and repre-
sented by *E. J. Dwyer*
its Vice-President
and by *L. A. Fuller*
its ASSISTANT SECRETARY

hereunto duly authorized
in virtue of a Resolution
of its Board of Directors
enacted at a meeting duly
called and regularly held
on the 26th day of May,
1975,

PARTY OF THE FIRST PART.

AND:

IAC LIMITED, a company
duly incorporated under
the laws of Canada,
(hereinafter called
"Lessor") having its Head
Office in the City of
Toronto, in the Province
of Ontario, herein
acting and represented by
R. K. Jackson, its
Vice President,
and by *G. C. Clerk*,
its
Assistant Vice President
hereunto duly authorized
in virtue of By-Law 51 of
its General By-laws,

PARTY OF THE SECOND PART.

WHEREAS Lessee has requested Lessor, and Lessor is willing, to acquire from Lessee certain rolling stock (as herein defined) for the purpose of leasing the same to Lessee;

AND WHEREAS forthwith upon the acquisition by Lessor of such rolling stock, Lessee shall lease the same from Lessor upon the terms, conditions and provisions of this Agreement;

NOW, THEREFORE, THIS AGREEMENT WITNESSES that for good and valuable consideration, receipt whereof is hereby acknowledged by Lessor, and in further consideration of the premises, the parties hereto agree as follows:

ARTICLE I - DEFINITIONS AND INTERPRETATION

SECTION 1.1 DEFINITIONS:

1.1.1 Where used in this Agreement, unless a contrary intention appears, the following words and phrases have the respective meanings hereinafter set forth:

(a) "Adverse Lien": includes any mechanic's lien, privilege, charge, lien, attachment, seizure, sequestration, distress, levy, encumbrance or security interest of any nature or kind whatsoever but does not include:

- (i) any Permitted Lien or any Temporary Lien,
- (ii) the respective rights of Lessor and Lessee in respect of the Rolling Stock, title thereto or interest therein as herein provided,
- (iii) any lien, privilege or other charge or encumbrance which results from claims against Lessor for which Lessee is not liable or responsible

- pursuant to the provisions hereof or which Lessee is not, pursuant to the provisions hereof, required to remove or discharge,
- (iv) any lien, privilege or other charge or encumbrance created by Lessor on the Rolling Stock, on Lessor's interest therein or on Lessor's rights under this Agreement, and
 - (v) any mortgage, lien, privilege or other charge on Lessee's leasehold interest herein, or in the Rolling Stock arising out of any mortgage on the property, assets or undertaking of Lessee now or hereafter created by Lessee;

(b) "Aggregate Acquisition Cost": means the total sum of money shown in Schedule "B" hereto annexed and signed by the parties hereto for identification (hereinafter called Schedule "B") paid by Lessor to acquire the Rolling Stock from Lessee;

(c) "Authority": includes the Canadian Transport Commission, the Minister of Transport for Canada, the Ministry of Transport of Canada, or any person, governmental department, ministry, bureau, commission or agency succeeding to the function of any of the foregoing or any other government, governmental department, authority, bureau, commission or agency, whether domestic or foreign, at any time or from time to time during the term hereof, having jurisdiction over:

- (i) the rail carriage operations of Lessee insofar as the same relate to the Rolling Stock,



- (ii) the Rolling Stock,
- (iii) the use, possession or operation of the Rolling Stock by Lessee, or
- (iv) the ownership of the Rolling Stock by Lessor,

and further extends to and includes the Association of American Railroads;

(d) "Bond": means a guarantee, indemnity, suretyship, bond, deposit or other security satisfactory to Lessor, provided by a Person acceptable to Lessor, in such form, for such amount and on such terms and conditions, as Lessor may at any time or from time to time require pursuant to any provision of this Agreement;

(e) "Casualty Value": means:

(A) where the Event of Loss occurs during the initial term of this Agreement if the Loss Settlement Date is the first day of the Relevant Period, a sum determined by multiplying the Unit Acquisition Cost of the Lost Rolling Stock by that percentage shown in Schedule "A" hereto annexed and signed by the parties hereto for identification (hereinafter called Schedule "A") which applies to the Relevant Period, but if the Loss Settlement Date is a day other than the first day of the Relevant Period, the Casualty Value is a sum calculated:

(i) by multiplying the Unit Acquisition Cost of the Lost Rolling Stock by the percentage shown in Schedule "A" that applies to the Relevant Period,

- (ii) by multiplying the Unit Acquisition Cost of the Lost Rolling Stock by the percentage shown in Schedule "A" that would apply if the Loss Settlement Date were the first day of the Relevant Period next following,
- (iii) by determining the difference between the products of the multiplications set forth in the preceding sub-paragraphs (i) and (ii), and
- (iv) by deducting from the product of the multiplication set forth in the preceding sub-paragraph (i), that percentage of the difference calculated under the preceding sub-paragraph (iii) which the number of days included in the portion of the Relevant Period expired to the Loss Settlement Date is of the number of days included in a full Relevant Period, and

(B) where the Event of Loss occurs after the expiry of the initial term of this Agreement and during any extension of the term contemplated in Section 3.3 hereof, a sum equal to the lesser of:

- (i) the amount produced by applying to the Unit Acquisition Cost of the Lost Rolling Stock that percentage which is shown in Schedule "A" and which applies to the fifteenth Relevant Period, or
- (ii) the fair market value of rolling stock which is of a like class, age and description as the Lost Rolling Stock;

(f) "Cost of Disposition": means the aggregate of all costs, disbursements, commissions and other expenses which Lessor may reasonably incur, pay, or be or become liable for, in the course of, or in connection with, recovering possession of, dismantling, removing, transporting, repairing, storing, reconditioning or reassembling any Rolling Stock on the occasion of any re-leasing, sale or other disposition of any Rolling Stock by Lessor pursuant to the powers conferred on Lessor under paragraph 9.1.1(b) hereof;

(g) "Date of Loss": means the date on which Lessee has determined, has been informed or otherwise has been apprised that an Event of Loss has occurred;

(h) "Event of Loss": means

- (i) a total loss, or constructive total loss, of any Rolling Stock resulting from any cause whatsoever and whether or not caused by, resulting from or occasioned by the wilful act, neglect, imprudence or want of skill of Lessee and includes, but is not limited to, damage, destruction or disappearance (for purposes hereof a constructive total loss is any loss, and the cost of repair of which would exceed the difference between the actual value of that Rolling Stock determined in accordance with the rules and regulations of the Association of American Railroads immediately before the loss and the value of any salvage from the loss) and extends to and

- includes any Rolling Stock being permanently rendered unfit for normal use for any reason whatsoever other than because that Rolling Stock has become, or is deemed by Lessee to have become, obsolete or surplus to Lessee's needs,
- (ii) the absolute, unconditional and permanent expropriation, confiscation or requisition of any Rolling Stock by any government or other authority, de facto or de jure, or
 - (iii) any other expropriation, confiscation, requisition or compulsory taking or use of any Rolling Stock by any government or other authority de facto or de jure, for a continuous and uninterrupted period of the lesser of one hundred and eighty (180) days or such other period of time as Lessor and Lessee may mutually agree upon in writing and in any such case the Date of Loss shall be deemed to be the last day of such continuous and uninterrupted period;

(i) "Loss Settlement Date": means that date next following the Date of Loss on which, under the terms of this Agreement, a Rental Payment falls due but if the Date of Loss falls within fifteen (15) days of the date on which that Rental Payment is due, means the next following date on which a Rental Payment is due hereunder;

(j) "Lost Rolling Stock": means any Rolling Stock in respect of which an Event of Loss shall have occurred;

(k) "Manufacturer": includes any Person who has made or given any Warranty in respect of the Rolling Stock or any part or component thereof;

(l) "Obligation": includes any obligation hereunder to pay when due any money which may at any time or from time to time hereafter be or become owing by Lessee to Lessor and the obligation to perform fully and faithfully, according to their terms, any and all covenants, agreements, undertakings and promises on the part of Lessee in favour of Lessor contained herein, created hereby or arising hereunder;

(m) "Overdue Interest Rate": means eleven percent (11%) per annum;

(n) "Overdue Payment": includes any Rental Payment, and any other sums, monies or payments due and owing by Lessee hereunder, and any and all sums disbursed by Lessor pursuant to Section 9.3 of this Agreement which are not paid as and when required hereunder, or any combination thereof;

(o) "Permitted Lien": means

- (i) any lien, privilege or other charge imposed by law such as materialmen's, mechanic's, vendors', workmen's, repairmen's, employees' or other like liens or privileges arising in the ordinary course of Lessee's business against Lessee, any Rolling Stock, Lessee's interest therein or Lessee's interest herein, which are not delinquent or which have not been duly filed, registered or conserved in accordance with applicable law,

(ii) any lien, privilege or other charge on Lessee's interest under this Agreement arising out of judgments or awards against Lessee with respect to which an appeal or proceeding for review is being prosecuted in good faith, with all due diligence and dispatch and by appropriate proceedings, and with respect to which a stay of execution while such appeal or proceeding for review is pending shall have been obtained and with respect to which, in the opinion of Lessor, no risk of sale, forfeiture, confiscation, seizure or loss of any Rolling Stock or any interest therein is involved, imminent or threatened, or

(iii) any lien, privilege or other charge for taxes of Lessee whether not yet due or being contested in good faith, with all due diligence and dispatch and by appropriate proceedings so long as, in the opinion of Lessor, such contestation does not involve any risk of sale, forfeiture, confiscation, seizure or loss of any Rolling Stock or any interest therein;

(p) "Person": includes a natural person, corporation, firm or partnership;

(q) "Proceeds of Loss": means the proceeds of insurance or of any indemnity, award or other monies payable, or for which a claim may be made or asserted, in respect of the occurrence of an Event of Loss;

(r) "Relevant Period": means that one of the consecutive twelve (12) month periods shown in Schedule "A" in which the Loss Settlement Date falls, the first of which such twelve month periods commences to run on December 1, 1975;

(s) "Rolling Stock": means the box cars, covered hopper cars, gondola coal cars, gondola cars and diesel locomotives more fully described in Schedule "B" hereto annexed and signed for identification by the parties hereto (hereinafter called Schedule "B") and, unless the context otherwise requires, where preceded by the word "the" extends to and includes all units of the Rolling Stock and where preceded by the word "any" extends to and includes those units of the Rolling Stock to which the context applies;


(t) "Temporary Lien": means rights of third parties under a sub-lease, interchange, pooling or similar arrangement expressly permitted by this Agreement;

(u) "Unit Acquisition Cost": means, in respect of any unit of the Rolling Stock, that portion of the Aggregate Acquisition Cost which is shown in Schedule "B", and which is attributed to that unit of the Rolling Stock;

(v) "Warranties": includes all conditions, warranties, guarantees, representations, service contracts, contracts to stock spare parts, or other agreements of any nature whatsoever, oral or written, express or implied, legal, statutory, conventional, collateral or other.

SECTION 1.2 - INTERPRETATION

1.2.1 Unless by express words, or necessary impli-

./11

cation, the context otherwise requires, "this Agreement", "hereto", "herein", "hereof", "hereby", "hereunder", and similar expressions refer to the whole of this Agreement and not to any particular article, section, paragraph, subparagraph or other portion hereof.

1.2.2 Any word used herein importing the singular number shall have a corresponding meaning when used in the plural and the converse applies.

1.2.3 In any agreement, document or writing in any way relating or pertaining to, or connected with, this Agreement, unless a contrary intention appears "Equipment" shall be deemed to mean "Rolling Stock".

ARTICLE II - REPRESENTATIONS AND WARRANTIES


SECTION 2.1 - LESSOR'S REPRESENTATIONS AND WARRANTIES

2.1.1 Lessor hereby represents and warrants that:

- (a) this Agreement constitutes legal, valid and binding obligations of Lessor enforceable in accordance with the provisions hereof, and
- (b) Lessor has full power, authority and legal right to enter into and perform this Agreement and the execution, delivery and performance of this Agreement have been duly authorized by all necessary corporate action on the part of Lessor.

SECTION 2.2 - EXCLUSION BY LESSOR OF ALL OTHER REPRESENTATIONS AND WARRANTIES

2.2.1 Save as in Section 2.1 hereof provided, Lessor does not make or give, and shall not have deemed to have made or given, any Warranties as to its title to the Rolling Stock, the Rolling Stock, the design, fitness, condition, operation, merchantability, durability or suitability of any Rolling Stock for any particular use intended by Lessee or as to any other matter or thing whatsoever and all Warranties are, to the extent permitted by law, hereby expressly excluded.

/12

SECTION 2.3 - LESSEE'S REPRESENTATIONS AND WARRANTIES

2.3.1 Lessee represents and warrants that:

- (a) Lessee is a corporation duly organized, validly existing and in good standing under the laws of Canada, is the holder of all consents, permits, licences, registrations and other privileges and franchises required by any government, governmental department, bureau, commission, committee or agency, domestic or foreign, having jurisdiction over Lessee's rail carriage operations, and is duly qualified and authorized to do business wherever necessary and to carry on its present business and operations wherever it uses the Rolling Stock, to own its properties and to perform its obligations under this Agreement,
- (b) Lessee has full power, authority and legal right to enter into and perform this Agreement and the execution, delivery and performance of this Agreement have been duly authorized by all necessary corporate action on the part of Lessee, do not require any shareholders' approval, do not require the approval of, or the giving of prior notice to, any Authority, and will not violate any provision of law or of Lessee's Charter or By-laws or result in the breach of, constitute a default under, contravene any provisions of, or result in the creation of any privilege, lien, hypothec, mortgage, pledge, charge, encumbrance or other security interest upon any property or assets of Lessee under, any agreement, indenture or other instrument to which Lessee is a party or by which Lessee or its property may be bound or affected,
- (c) this Agreement constitutes legal, valid and binding obligations of Lessee enforceable in accordance with the provisions hereof,
- (d) there are no suits, actions or proceedings pending or, to the knowledge of Lessee, threatened

in any court or before or by any Authority against or affecting Lessee which may have a material adverse effect on the financial condition or business of Lessee, and

(e) the financial statements of Lessee as at December 31, 1974, copies of which have been furnished to Lessor:

- (i) are complete and correct and fairly present the financial condition of Lessee as at the date thereof, and
- (ii) correctly set forth the financial condition of Lessee as of such date and the results of its operations for such year,

and since December 31, 1974, there has been no material adverse change in such condition or operations and nothing has occurred which will materially adversely affect the ability of Lessee to carry on its business and operations and to perform its obligations under this Agreement.

ARTICLE III - TERM, RENTAL AND RELATED PROVISIONS

SECTION 3.1 - LEASE


3.1.1 Lessor hereby leases to Lessee, and Lessee hereby leases from Lessor, the Rolling Stock.

SECTION 3.2 - TERM

3.2.1 Lessee hereby leases the Rolling Stock for an initial term of fifteen (15) years commencing on December 1, 1975 and continuing thereafter until fully complete and ended, subject to earlier termination as hereinafter provided.

SECTION 3.3 - OPTION TO EXTEND TERM

3.3.1 Lessor grants to Lessee an option to extend the initial term hereof in respect of any Rolling Stock for

.../14

an extended term of five years (hereinafter called the "first extended term") which shall commence on December 1, 1990 and terminate on November 30, 1995.

3.3.2 If Lessee exercises the option granted in the preceding paragraph 3.3.1, Lessee has a further option in respect of the Rolling Stock to which the first extended term may apply to extend the term hereof for a further period of five years (hereinafter called the "second extended term") which shall commence on December 1, 1995 and terminate on November 30, 2000.


3.3.3 Any option to extend the term may only be exercised by Lessee and the term will only be extended by Lessor if on the date of exercise of such option and on the commencement date of the extended term, no Event of Default as defined in Section 8.1 hereof has occurred or happened and which is continuing but Lessor, in its discretion, may waive the requirements of this paragraph 3.3.3.

3.3.4 Each option to extend the term may be exercised by Lessee only by notice to Lessor, given at least thirty (30) days prior to the date of expiry of the initial term hereof or prior to the date of expiry of the first extended term, as the case may be.

3.3.5 During each extended term all of the terms, conditions and provisions of this Agreement shall continue to apply except that the rental shall be the amounts determined in accordance with paragraph 3.4.2 hereof.

SECTION 3.4 - RENTAL

3.4.1 Throughout the initial term hereof, Lessee shall, subject to the provisions of paragraph 4.5.7 hereof, pay to Lessor semi-annual Rental Payments payable in arrears each in the amount of one million, four hundred and seventy-

/15

four thousand, three hundred and thirty dollars and fifty-three cents (\$1,474,330.53) the first of which shall become due and payable on May 31, 1976 and the remainder of which shall become due and payable on the thirtieth (30th) day of November and on the thirty-first (31st) day of May of each year during the initial term hereof up to and including the thirtieth (30th) day of November, 1990.

3.4.2 If in respect of any Rolling Stock Lessee exercises the option to extend the term granted in paragraphs 3.3.1 and 3.3.2 hereof, then throughout the first extended term or the second extended term or both, as the case may be, Lessee shall pay to Lessor on the thirty-first (31st) day of May and on the thirtieth (30th) day of November in each year rental payments each in an amount equal to the fair market rental value for a six month period determined as at the commencement date of the first extended term or the second extended term, as the case may be, and the amount so determined shall, in respect of that Rolling Stock, apply throughout the whole of the applicable extended term.

SECTION 3.5 - PLACE OF PAYMENT

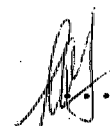
3.5.1 The Rental Payments and all other monies payable hereunder shall be paid to Lessor at Suite 201, 45 St. Clair Avenue West, Toronto, Ontario M4V 2Y2, or at such other address in Canada as Lessor may from time to time designate by notice to Lessee.

SECTION 3.6 - OVERDUE PAYMENT

3.6.1 Any Overdue Payment shall bear interest at the Overdue Interest Rate calculated from the due date thereof and compounded semi-annually until the Overdue Payment and accrued compound interest thereon shall have been paid in full.

SECTION 3.7 - NO RIGHT TO COMPENSATE

3.7.1 Lessee shall not be entitled to any abatement,


./16

reduction of, or compensation or set-off against any Rental Payment or other monies payable by Lessee hereunder including, but not limited to, abatements, reductions, compensations or set-offs due or alleged to be due to, or by reason of, any past, present or future claims of Lessee against Lessor under this Agreement or otherwise; nor, except as otherwise expressly provided herein, shall this Agreement terminate, or the respective obligations of Lessor or Lessee be otherwise affected, by reason of any defect in, or damage to, or loss of possession or loss of use of, or destruction of, any Rolling Stock from whatever cause, the prohibition of, or other restriction against, Lessee's use of any Rolling Stock, the interference with such use by any Person, or for any other cause whatsoever whether similar or dissimilar to the foregoing, any present or future law to the contrary notwithstanding, it being the intention of the parties hereto that the Rental Payments and other monies payable hereunder shall be payable in all events in the manner and at the times herein provided unless the obligation to pay the same shall be terminated pursuant to an express provision of this Agreement.

SECTION 3.8 - OPTION TO PURCHASE

3.8.1 Lessee has the option, exercisable in the manner hereinafter set forth:

- (a) to purchase any Rolling Stock on the date of expiry of the initial term hereof,
- (b) if Lessee shall have exercised the option to extend the term granted in paragraph 3.3.1 hereof, to purchase on the date of expiry of the first extended term any Rolling Stock to which the first extended term applied, and
- (c) if Lessee shall have exercised the option to extend the term granted in paragraph 3.3.2 hereof, to purchase on the expiry of the second extended term, any Rolling Stock to which the second extended term applied.

./17

3.8.2 Any option to purchase may be exercised only while this Agreement is in full force and effect, and when no Event of Default, as defined in Section 8.1 hereof, has occurred and is continuing.

3.8.3 Any option to purchase shall be exercisable only by notice by Lessee to Lessor stating Lessee's intention to exercise the option and describing the Rolling Stock in respect of which the option is being exercised, given not less than thirty (30) days, nor more than one hundred and eighty (180) days, prior to the date on which that Rolling Stock may be purchased by Lessee pursuant to the exercise of an option to purchase.


3.8.4 Upon due exercise of an option to purchase, there shall be constituted between Lessor and Lessee a binding agreement of purchase and sale of the Rolling Stock described in the notice referred to in the foregoing paragraph 3.8.3. Notwithstanding any provision hereof, due exercise of the option to purchase shall require that Lessor shall actually receive the notice referred to in paragraph 3.8.3 hereof.

3.8.5 It shall be a condition of the agreement of purchase and sale resulting from the exercise of an option to purchase that on the date on which any Rolling Stock is purchased by Lessee:

(a) this Agreement shall be in full force and effect; and

(b) Lessee shall not be in default to observe and perform, and shall have committed no act in breach of, any Obligation which is continuing, and

if the foregoing conditions be not fulfilled and Lessor is not willing to waive the same, which it shall be entitled to do, the said agreement of purchase and sale shall be null and void.

/18

3.8.6 The said purchase and sale shall be completed on the date of expiry of the initial term hereof, on the date of expiry of the first extended term, or on the date of expiry of the second extended term, as the case may be, on which date Lessee shall pay the purchase price to Lessor and Lessor will thereupon sell to Lessee the Rolling Stock described in the notice referred to in paragraph 3.8.3 hereof.

3.8.7 Upon completion of the said purchase and sale, the Rolling Stock so purchased shall be deemed to be no longer subject to the terms, conditions and provisions of this Agreement, save only paragraph 6.1.2 hereof.

3.8.8 The purchase price of any Rolling Stock purchased by Lessee pursuant to the exercise of an option to purchase shall be the fair market value thereof on the date of purchase by Lessee.


SECTION 3.9 - OVERHOLDING

3.9.1 Subject to the provisions of any renewal agreement and subject to the provisions of paragraph 3.9.2 hereof, if after the expiry of:

(a) the initial term hereof Lessee remains in possession of any Rolling Stock in respect of which Lessee has not exercised an option to purchase or the option to extend the term hereof, or

(b) the first extended term Lessee remains in possession of any Rolling Stock in respect of which Lessee shall have exercised the option to extend the term granted in paragraph 3.3.1 hereof but shall not have exercised the option to extend the term granted in paragraph 3.3.2 hereof or the option to purchase herein granted, or

(c) the second extended term Lessee remains in possession of any Rolling Stock in respect of


./19

which Lessee shall have exercised the option to extend the term granted in paragraph 3.3.2 hereof, but shall not have exercised the option to purchase, herein granted,

all the terms, conditions and provisions of this Agreement shall apply thereto unless and until Lessee has returned that Rolling Stock to Lessor in accordance with Section 4.8 hereof, that Rolling Stock has been placed in storage pursuant to Section 4.8 or has been sold to a third party or transferred to Lessee by Lessor pursuant to Section 4.9 hereof, or Lessor has, by express agreement in writing, relieved Lessee from its obligations hereunder with respect thereto.

3.9.2 If the provisions of paragraph 3.9.1 shall at any time apply in respect of any Rolling Stock, Lessee shall, if it continues to use that Rolling Stock, pay rent on the thirty-first (31st) day of May and on the thirtieth (30th) day of November of each year, the rent for each six month period to be in an amount equal to the rent payable in respect of that Rolling Stock for a six month period in the preceding initial term, first extended term, or second extended term, as the case may be, but if, in respect of any six month period, Lessee uses that Rolling Stock for less than the full six month period, the amount of the rental for that period shall be reduced to an amount established by applying to the amount of the rent for the full six month period calculated as aforesaid, the percentage that the number of days in that period during which that Rolling Stock was used by Lessee is of the number of days in the full six month period.

3.9.3 Nothing in paragraph 3.9.2 hereof shall have, or be deemed to have, the effect of extending or renewing in respect of any Rolling Stock the initial term, the first extended term or the second extended term hereof.

.../20

ARTICLE IV - PROVISIONS RESPECTING THE ROLLING STOCK

SECTION 4.1 - OWNERSHIP

4.1.1 Title to, ownership of, and property in, the Rolling Stock shall at all times be and remain solely and exclusively in Lessor, subject only to the rights of Lessee to use the same pursuant to the terms, conditions and provisions of this Agreement and to purchase the same in pursuance of the options to purchase herein granted in respect thereof.

SECTION 4.2 - MARKING OF THE ROLLING STOCK

4.2.1 At all times Lessee shall, subject to paragraph 4.2.5, cause the Rolling Stock to be kept numbered with the road numbers set forth in Schedule "B".

4.2.2 Lessee shall mark plainly, distinctly, permanently and conspicuously by a plate or stencil printed in contrasting color each side of the Rolling Stock in letters not less than one inch in height with the following inscription:

IAC LIMITED

45 St. Clair Avenue W.


Toronto, Ontario

Owner and Lessor

and Lessee shall make such changes thereof and additions thereto as from time to time may be required to protect the title of Lessor to the Rolling Stock or the Replacement Rolling Stock and Lessor's rights under this Agreement.

4.2.3 The marking of the Rolling Stock required by the foregoing paragraph 4.2.2 must be completed by Lessee within a period of two years computed from December 1, 1975.

4.2.4 Notwithstanding the time granted to Lessee to fulfill its obligations under the foregoing paragraph 4.2.3,

 /21

Lessee agrees that it shall forthwith commence and proceed with all due diligence and dispatch to mark the Rolling Stock or the Replacement Rolling Stock as required by said paragraph 4.2.2.

4.2.5 Lessee shall replace promptly any markings required by paragraph 4.2.2 hereof which may at any time or from time to time be removed, defaced, destroyed or obliterated.

4.2.6 Lessee shall not change the road number of any Rolling Stock except with the consent of Lessor and in accordance with a statement of new road numbers to be substituted therefor, which consent and statement previously shall have been filed with Lessor by Lessee and filed, recorded or deposited in all public offices where this Agreement shall have been filed, recorded or deposited.

4.2.7 Except as above provided in paragraph 4.2.2, Lessee will not allow the name of any person, association or corporation to be placed on any Rolling Stock or Replacement Rolling Stock as a designation that might be interpreted as a claim of ownership; provided, however, that Lessee may cause the Rolling Stock or the Replacement Rolling Stock to be lettered with the names, initials or other insignia customarily used by Lessee or its affiliates for convenience of identification on rolling stock used by it or them and being of the same or a similar type as the Rolling Stock or the Replacement Rolling Stock.

4.2.8 Lessee shall indemnify the Lessor against any loss, cost or damages sustained or incurred by Lessor as a result of the marking of any Rolling Stock with such name, initials or insignia, pursuant to paragraph 4.2.7 hereof.



SECTION 4.3 - RISK

4.3.1 Save as otherwise herein expressly provided, the Rolling Stock shall at all times and in all respects be at the risk of Lessee and, shall be subject to the provisions of this Agreement. Lessee shall be liable for any loss of or damage to the Rolling Stock and shall assume custody thereof and full responsibility for its use, operation and maintenance.

4.3.2 Lessor shall not be liable to Lessee for any loss, cost, damage or expense of any kind or nature caused, directly or indirectly, by any Rolling Stock or the use or maintenance thereof, or by any interruption of service or loss of use thereof, or for any loss of business or damage whatsoever and howsoever caused unless caused by a negligent act or omission of Lessor or any of its servants or agents.

SECTION 4.4 - LESSEE'S ACKNOWLEDGEMENTS

4.4.1 Lessee acknowledges that prior to the date hereof it was in possession of the Rolling Stock and that the Rolling Stock was chosen by it, and that it is of a make, size, design and capacity desired by Lessee for the purposes intended by Lessee.

4.4.2 The delivery by Lessee to Lessor of an agreement of sale in respect of the Rolling Stock shall, as between Lessor and Lessee, constitute acceptance and conclusive proof that Lessee has received, tested and inspected the Rolling Stock and that it is in good condition and repair and suitable for the purposes of Lessee, and shall preclude Lessee from asserting against Lessor any claim, demand or action based upon the selection of the Rolling Stock, its condition, durability or suitability for any particular use intended by Lessee.

4.4.3 Lessee acknowledges and agrees that as to any Warranties, Lessee shall not look to Lessor but shall look

only to the Manufacturers, the Warranties of all such Persons being accepted by Lessee in lieu of any Warranties by Lessor.

SECTION 4.5 - EVENT OF LOSS

4.5.1 On the occurrence of an Event of Loss, Lessee shall:

- (a) within thirty (30) days of the Date of Loss, give to Lessor a notice which:
 - (i) describes the Event of Loss and the circumstances under which it occurred,
 - (ii) describes the Lost Rolling Stock,
 - (iii) specifies the Date of Loss,
 - (iv) states if Lessee intends to replace the Lost Rolling Stock in the manner hereinafter set forth, and
 - (v) states the Loss Settlement Date if Lessee does not intend to replace the Lost Rolling Stock.

4.5.2 If Lessee intends to replace the Lost Rolling Stock, Lessee shall, within ninety (90) days of the Date of Loss, replace from Lessee's inventory the Lost Rolling Stock with other rolling stock (hereinafter called the "Replacement Rolling Stock") which is owned by Lessee, which is acceptable to Lessor, and which

- (a) has a value essentially the same as the value that the Lost Rolling Stock ought to have had immediately prior to the occurrence of the Event of Loss if the Lost Rolling Stock had been maintained in accordance with the provisions hereof, and

- (b) has a remaining anticipated economic life which approximates the economic life of the Lost Rolling Stock which should have remained if the Event of Loss had not occurred,

the whole subject to fulfillment of the following conditions, namely:

- (c) Lessee shall transfer to Lessor title to and ownership of the Replacement Rolling Stock, and
- (d) Lessor shall transfer to Lessee, subject to the rights of any insurers or other Persons therein resulting from the occurrence of an Event of Loss any right, title or interest of Lessor in and to the Lost Rolling Stock and shall assign to Lessee any claim for Proceeds of Loss, and
- (e) Lessee, at its expense, shall attend to, or cause to be made, all such registrations, filings or recordations as may be necessary to secure and preserve Lessor's rights in, and ownership of, the Replacement Rolling Stock and Lessor's rights hereunder with respect thereto.

4.5.3 Upon any replacement pursuant to paragraph 4.5.2 hereof, the Replacement Rolling Stock shall take the place of the Lost Rolling Stock, shall be the property of Lessor and shall be subject to all the terms, conditions and provisions hereof with the intent and to the same effect as if the Replacement Rolling Stock were specifically described in this Agreement in the place and stead of the Lost Rolling Stock.

4.5.4 If Lessee replaces the Lost Rolling Stock as provided in this Section 4.5 then, if Lessee is not at the time in default to perform and observe and has committed no act in breach of any Obligation which is continuing, any Proceeds of Loss received at any time by Lessor with respect to that Event of Loss shall be paid over to Lessee and be retained by it and any Proceeds of Loss received by Lessee shall be retained by Lessee unless Lessee is at the time in default to observe and perform or has committed any act in breach of any Obligation which is continuing, in which case Lessee shall forthwith remit such Proceeds of Loss to Lessor.

4.5.5 Any Proceeds of Loss which Lessee is not entitled to retain, solely because Lessee at the time is in default to observe and perform, or has committed an act in breach of an Obligation which is continuing shall be paid to and held by Lessor and shall be paid over to Lessee when such default or act in breach shall no longer be continuing, provided that, notwithstanding the foregoing, if Lessor shall have theretofore elected to pursue its remedies under Section 9.1 hereof, such amounts shall be retained by Lessor, except that upon payment by Lessee of the sums referred to in paragraph 4.5.6 hereof, there shall be paid to Lessee any amounts to which Lessee would, except for such default or act in breach, be entitled under paragraph 4.5.2(d) above.

4.5.6 If Lessee elects not to replace the Lost Rolling Stock with Replacement Rolling Stock, or if any of the conditions set forth in paragraph 4.5.2 are not or cannot be fulfilled, Lessee shall, on the Loss Settlement Date, pay to Lessor a sum equal to the aggregate of:

- (i) the Casualty Value of the Lost Rolling Stock,
- (ii) any Rental Payment which falls due on the Loss Settlement Date,

whereupon Lessor will transfer without further consideration to Lessee, subject to the rights of any insurers or any other Persons therein resulting from the occurrence of the Event of Loss, the Lost Rolling Stock and any claim for Proceeds of Loss thereof and when the foregoing is completed, the Lost Rolling Stock shall no longer be subject to the terms, conditions and provisions of this Agreement.

4.5.7 In respect of any Lost Rolling Stock to which the provisions of the foregoing paragraph 4.5.6 applies, after the Loss Settlement Date:

- (a) Lessee shall be relieved of payment of rent in respect of that Lost Rolling Stock by, and each Rental Payment shall be reduced by:

- (i) an amount equal to 6.3928% of the Unit Acquisition Cost of the Lost Rolling Stock, if that Event of Loss occurs during the initial term, and
 - (ii) an amount equal to the fair market rental value of that Rolling Stock which applies during the first extended term or the second extended term, as the case may be, if that Event of Loss occurs after the expiry of the initial term, and
- (b) the option to purchase and the option to extend the term hereof in respect of that Lost Rolling Stock shall expire and terminate.

SECTION 4.6 - PARTING WITH POSSESSION, ASSIGNMENT AND SUBLETTING

4.6.1 Lessee shall not:

- (a) cede, sell or assign this Agreement or its rights hereunder,
- (b) sublet any Rolling Stock,
- (c) assign, deliver, transfer or otherwise relinquish or surrender possession or dispose of any Rolling Stock save in the course of required or scheduled servicing, maintenance, repair or modification thereof,

without the prior written permission of Lessor, such permission not to be unreasonably withheld.

4.6.2 Notwithstanding the provisions of paragraph 4.6.1 hereof, Lessee may, without obtaining the prior written permission of Lessor:

- (a) entrust the use of any Rolling Stock to any corporation which constitutes one of the "National Railways" as that term is defined in the Canadian National Railways Act, (R.S.C. 1970 c.10) or to any other corporation which is a subsidiary of, related to, or affiliated with, Lessee,

(b) use the Rolling Stock upon lines of railroads over which Lessee or any corporation referred to in sub-paragraph 4.6.2 (a) above has trackage or other operating rights or over which other rolling stock of Lessee or any such corporation is regularly operated pursuant to contract,

(c) permit the use of any Rolling Stock upon connecting and other railroads in the usual interchange of traffic, or

(d) permit the sub-letting or temporary leasing or the emergency use by other parties of any Rolling Stock in the normal course of business,

but only upon and subject to all the terms and conditions of this Agreement.

4.6.3 No assignment, sublease or interchange entered into by Lessee hereunder shall relieve Lessee of any liability or obligation hereunder.

4.6.4 Nothing in this Section 4.6 shall be deemed to restrict the right of Lessee to assign or transfer its leasehold interest under this Agreement in the Rolling Stock or possession of the Rolling Stock to any Person into or with whom Lessee shall have become merged or consolidated or who shall have acquired the property of Lessee as an entirety or substantially as an entirety and who shall have duly assumed the obligations hereunder of Lessee.

4.6.5 Nothing in this Section 4.6 shall be deemed to restrict the right of Lessee to sublease any Rolling Stock to any corporation which constitutes one of the "National Railways" as that term is defined in the Canadian National Railways Act (R.S.C. 1970 c. 10) or to any other corporation which is a subsidiary of, related to, or affiliated with, Lessee but no such sublease shall relieve Lessee of any liability or obligation hereunder.

4.6.6 Any sublease, assignment, interchange, agreement or arrangement referred to in paragraph 4.6.2 above shall be subject, and subordinate, to all the terms and conditions of this Agreement.

SECTION 4.7 - RETURN OF ROLLING STOCK UPON DEFAULT

4.7.1 If an Event of Default described in Section 8.1 hereof shall occur Lessee shall, forthwith upon notice from Lessor, deliver possession of the Rolling Stock to Lessor.

4.7.2 For the purpose of delivering possession of the Rolling Stock to Lessor as above required, Lessee shall, at its own cost, expense and risk:

- (a) forthwith place the Rolling Stock in such reasonable storage place on Lessee's lines of railroad as Lessor may designate or, in the absence of such designation, as Lessee may select,
- (b) permit Lessor to store that Rolling Stock in such reasonable storage place on Lessee's lines of railroad for a period not exceeding one hundred and twenty (120) days at the risk of Lessee, and
- (c) transport the Rolling Stock, at any time within such one hundred and twenty (120) day period, to any place on the lines of railroad operated by Lessee or to any connecting carrier for shipment or transportation, all as Lessor may reasonably direct upon not less than thirty (30) days' notice to Lessee.

4.7.3 The assembling, delivery, storage and transporting of the Rolling Stock by Lessee as hereinbefore provided are of the essence of this Agreement, and upon application to any court having jurisdiction in the premises, Lessor shall be entitled to judgment against Lessee requiring specific performance of the obligations of Lessee to assemble, deliver, store and transport the Rolling Stock.

4.7.4 Without in any way limiting the obligations of Lessee under the foregoing provisions of this Section 4.7, Lessee hereby irrevocably appoints Lessor as the agent and attorney of Lessee, with full power and authority, at any time while Lessee is obligated to deliver possession of any Rolling Stock to Lessor, to demand and take possession of that Rolling Stock in the name and on behalf of Lessee from whomsoever shall be at the time in possession thereof.

SECTION 4.8 - RETURN OF ROLLING STOCK UPON EXPIRATION OF TERM

4.8.1

If:

- (a) upon the expiry of the initial term hereof, Lessee does not exercise the option to purchase herein granted or the option to extend the term granted in paragraph 3.3.1 hereof in respect of any Rolling Stock, or
- (b) upon the expiry of the first extended term Lessee does not exercise the option to purchase herein granted or the option to extend the term granted in paragraph 3.3.2 hereof in respect of any Rolling Stock not theretofore purchased by Lessee, or theretofore returned to Lessor pursuant to this Section 4.8, then:
- (c) in respect of the Rolling Stock referred to in paragraph 4.8.1 (a), on the date of expiry of the initial term hereof, and
- (d) in respect of the Rolling Stock referred to in paragraph 4.8.1 (b), on the date of expiry of first extended term, and
- (e) on the date of expiry of the second extended term in respect of all other Rolling Stock not theretofore purchased by Lessee or theretofore returned to Lessor,

Lessee shall:

- (f) at its own cost and expense, at the request of Lessor, deliver possession of that Rolling

Stock to Lessor upon such storage tracks of Lessee as Lessor may designate, or in the absence of such designation as Lessee may select,

(g) permit Lessor to store that Rolling Stock on such tracks for a period not exceeding ninety (90) days, and

(h) transport the same at any time within such ninety (90) day period to any reasonable place on the lines of railroad operated by Lessee or to any connecting carrier for shipment, all as directed by Lessor upon not less than thirty (30) days' written notice to Lessee.

4.8.2 All movement and storage pursuant to paragraph 4.8.1 hereof of any Rolling Stock is to be at the risk and expense of Lessee and the Rolling Stock shall, throughout the time the Rolling Stock is being moved or stored, be in all respects subject to all the provisions of this Agreement as though the term had not ended, save that Lessee shall, subject to the provision of Section 3.9.2 hereof, be relieved from the payment of rent.

4.8.3 During any such storage period Lessee will permit Lessor or any person designated by Lessor, including the authorized representative or representatives of any prospective purchaser of any Rolling Stock, to inspect the same; provided however that Lessee shall not be liable except in the case of negligence of Lessee or of its employees or agents for any injury to or death of any person exercising, either on behalf of Lessor or any prospective purchaser, the rights of inspection granted herein.

4.8.4 The assembling, delivery, storage and transporting of the Rolling Stock as provided in this Section 4.8 are of the essence of this Agreement, and upon application to any court having jurisdiction Lessor shall be entitled to

judgment against Lessee requiring specific performance of the obligations of Lessee to so assemble, deliver, store and transport the Rolling Stock.

4.8.5 At the time when any Rolling Stock is assembled and stored pursuant to this Section 4.8, that Rolling Stock shall be in the same condition as it was on the commencement date of the term hereof, reasonable wear and tear excepted and at all times during the period of storage and thereafter until delivered to Lessor or to the Person designated by Lessor must be kept, free and clear of all Adverse Liens, Permitted Liens and Temporary Liens.

SECTION 4.9 - TERMINAL DISPOSITION

4.9.1 If:

- (a) upon the expiry of the initial term Lessee shall not have exercised the option to purchase herein granted or the option to extend the term granted in paragraph 3.3.1 hereof in respect of any Rolling Stock, or
 - (b) upon the expiry of the first extended term Lessee shall not have exercised in respect of any Rolling Stock the option to purchase herein granted or the right to extend the term granted in paragraph 3.3.2 hereof, or
 - (c) upon the expiry of the second extended term Lessee shall not have exercised in respect of any Rolling Stock the option to purchase herein granted,
- Lessor shall during the ninety day (90) period of storage contemplated by Section 4.8 hereof which applies to that Rolling Stock, attempt to sell that Rolling Stock by advertising the same for sale by such media, at such locations, at such times and on such terms and conditions as Lessor shall choose.

4.9.2 Lessor shall not unreasonably refuse any reasonable offer to purchase the Rolling Stock referred to in paragraph 4.9.1 received from any Person.

4.9.3 If no reasonable offer to purchase that Rolling Stock is received from any Person, Lessor shall have the right exerciseable by notice to Lessee, upon the expiry of the said ninety (90) day period of storage to transfer title to that Rolling Stock to Lessee without monetary consideration by Lessee.

SECTION 4.10 - ALTERATIONS

4.10.1 Lessee may make any alterations, additions or improvements to any Rolling Stock as Lessee may deem desirable in the proper conduct of its business, if:

(a) the alterations, additions or improvements do not materially decrease the value of that Rolling Stock and do not interfere with or frustrate the intended use thereof,

(b) all the alterations, additions or improvements are free and clear of all Adverse Claims, and

(c) the making of the alterations, additions or improvements does not subject that Rolling Stock to any Adverse Claim.

4.10.2 Save as in paragraph 4.10.5 hereof provided all alterations, additions or improvements of whatever kind or nature made by Lessee to any Rolling Stock shall be made at Lessee's expense and, upon being made, belong to and become the property of Lessor and are subject to all the terms, conditions and provisions of this Agreement.

4.10.3 Save as in paragraph 4.10.5 hereof provided all alterations, additions or improvements of whatever kind or nature made by Lessee to any Rolling Stock are conclusively deemed to have become part of that Rolling Stock by accession.



4.10.4 Upon the expiration, by effluxion of time and not otherwise, of the initial term hereof, or, as the case may be, of the first extended term or the second extended term, provided Lessee is not then in default in the due observance and performance of, and has committed no act in breach of, any Obligation, Lessee may, at its expense, remove any alterations, additions or improvements which it has made to any Rolling Stock described or referred to in sub-paragraphs 4.8.1 (c), (d) or (e) hereof, if the removal may be made without damage to that Rolling Stock and if Lessee, at its expense, restores that Rolling Stock to the state and condition in which it was on the commencement date of the term hereof, reasonable wear and tear excepted.

4.10.5 Notwithstanding the foregoing paragraphs 4.10.2, 4.10.3 and 4.10.4 Lessee shall have the right to make any alterations, additions or improvements to any Rolling Stock which are of a temporary nature in which case the provisions of the said paragraphs 4.10.2, 4.10.3 and 4.10.4 shall not apply to those alterations, additions or improvements, provided always that those alterations, additions or improvements comply with the requirements of paragraph 4.10.1 hereof.

4.10.6 Upon any alterations, additions or improvements becoming incorporated or installed in or attached to or otherwise forming part of any Rolling Stock, Lessee shall, whenever reasonably required by Lessor and on notice from Lessor, do all such acts and execute all such documents as may be necessary to ratify and confirm Lessor's ownership of those alterations, additions or improvements and Lessor shall, whenever reasonably required by Lessee and on notice from Lessee do all such acts and execute all such documents as may be necessary to ratify and confirm Lessee's ownership of any alteration, addition or improvements at any time or from time to time removed by Lessee from any Rolling Stock pursuant to any provision of this Agreement.

ARTICLE V - PROCEDURES

SECTION 5.1 - NOTICES

5.1.1 Any notice required to be given hereunder shall be in writing and may be personally delivered or may be forwarded by registered mail.

5.1.2 If any such notice is so mailed, it shall be deemed to have been given by the sender and received by the party to whom it has been addressed seventy-two (72) hours after the due mailing thereof at any post office in Canada by prepaid registered mail addressed to Lessor or Lessee at their following respective addresses:

IAC LIMITED

45 St. Clair Ave. W.,
Toronto, Ontario M4V 2Y2
Attention: The Secretary

CANADIAN NATIONAL RAILWAY COMPANY


P.O. Box 8108
Montreal, Quebec H3C 3N3
Attention: Treasurer

5.1.3 Lessor or Lessee may, from time to time, give notice of any change of its address and in such event any such address shall be changed accordingly.

SECTION 5.2 - PROOFS OF LOSS

5.2.1 If an Event of Loss occurs and if that Event of Loss gives rise to proceeds of loss, Lessee must make all proofs of loss and take all steps necessary to effect recovery of any Proceeds of Loss and in that connection Lessor will sign all papers and take all other steps and actions reasonably requested by Lessee in order to effect recovery.

5.2.2 If Lessee shall fail or refuse to make proofs of loss and take all steps necessary to effect recovery as


.../35

aforesaid, Lessor may, at the cost and expense of Lessee, make such proofs of loss and take all other steps necessary to effect such recovery and, in that case Lessee shall sign all papers and do all such other things and take all such other actions reasonably requested by Lessor in order to effect such recovery.

SECTION 5.3 - CONDITIONS OF SALE OR TRANSFER

5.3.1 Any sale or transfer by Lessor to Lessee of any Rolling Stock or other goods shall be without any Warranties affecting or relating to such Rolling Stock or other goods, Lessor's title thereto or the sale thereof save only that Lessor shall warrant that the Rolling Stock is free and clear of any Adverse Liens which were created by Lessor or which have arisen out of any act or omission by Lessor. Save as aforesaid, all Warranties shall be expressly excluded from the sale or transfer and the Rolling Stock or other goods shall be sold in whatever condition and location they may be on the date of such sale.

5.3.2 In any sale or transfer by Lessee to Lessor of any Replacement Rolling Stock or other goods, Lessee shall warrant that Lessee has the right to sell, and holds good and marketable title to, such Replacement Rolling Stock or other goods free and clear of all Adverse Liens, Temporary Liens and Permitted Liens.

5.3.3 Any sale or transfer referred to in the preceding paragraphs 5.3.1 and 5.3.2 shall be evidenced by a Bill of Sale executed by Lessor or by Lessee, as the case may be, containing such terms and conditions as may be reasonably required by Lessor and by Lessee.

5.3.4 When any sale or transfer referred to in the preceding paragraphs 5.3.1 or 5.3.2 takes place, Lessee shall pay, at the closing of such sale or transfer, all

taxes, licence fees and other governmental assessments connected with the transfer of title to and ownership of the Rolling Stock, the Replacement Rolling Stock or other goods being sold or transferred, the whole without regard to whether or not such taxes, licence fees or other governmental assessments are imposed on, or assessed against, Lessor or Lessee or both, save only taxes imposed on the income or capital of Lessor.

SECTION 5.4 - ASSIGNMENT OF WARRANTIES

5.4.1 Lessor hereby conveys to Lessee any and all Warranties made or given by all Manufacturers.

5.4.2 In all circumstances relating to any claim, action, suit or proceeding arising out of any Warranty referred to in paragraph 5.4.1 Lessor shall cooperate fully with Lessee and shall furnish promptly to Lessee all relevant documents or copies thereof and other assistance within Lessor's knowledge, possession or control and which are reasonably required in connection with such claim, action, suit or proceeding.

5.4.3 If Lessor shall take possession of any Rolling Stock pursuant to any provision of this Agreement, all Warranties in respect of that Rolling Stock referred to in paragraph 5.4.1 hereof shall ipso facto be reconveyed to and vest in Lessor without any further act or deed on the part of Lessor or the part of Lessee being required but, on notice from Lessor, Lessee shall take all such steps, do all such things and execute all such deeds, documents and writings as may be necessary to extend, give effect to, or render enforceable, the reconveyance of the said Warranties to Lessor at the times contemplated in this paragraph 5.4.3.

SECTION 5.5 - FAIR MARKET VALUE DETERMINATION

5.5.1 The "fair market value" and the "fair market rental value" referred to in paragraphs 3.8.8 and 3.4.2,

respectively and the "fair market value of like rolling stock" referred to in paragraph 1.1.1 (e) (B), shall be such amount as is mutually agreed upon by Lessor and Lessee acting in good faith and after obtaining such advice and opinions as Lessor and Lessee or either of them deem requisite.

5.5.2 If Lessor and Lessee are unable to agree upon the fair market value or the fair market rental value, whichever is applicable, of any Rolling Stock within thirty (30) days after receipt by Lessor of a notice of Lessee's election to exercise an option to purchase or an option to extend the term hereof, or upon any application of the provisions of paragraph 1.1.1 (e) (B) hereof, if Lessor and Lessee are unable to agree upon the fair market value of like rolling stock, the fair market value or the fair market rental value, or the fair market value of like rolling stock whichever is applicable, shall be determined by an appraiser selected by mutual agreement of Lessor and Lessee.

5.5.3 If Lessor and Lessee are not able to agree upon an appraiser, or if the fair market value, the fair market rental value, or the fair market value of like rolling stock, whichever is applicable, is not determined by that appraiser within thirty (30) days after receipt by that appraiser of instructions to make such a determination then Lessor and Lessee shall each, within the next following five (5) business days, appoint an appraiser.

5.5.4 If the appraisers appointed by Lessor and Lessee are unable to agree upon the fair market value, the fair market rental value, or the fair market value of like rolling stock, as the case may be, within thirty (30) days after their appointment, those appraisers shall select a third appraiser and the decision of any two appraisers shall be final and binding.

5.5.5 If any two of the three appraisers referred to in paragraph 5.5.4 hereof are unable, within thirty days of the date of appointment of the third appraiser, to determine the fair market value, the fair market rental value, or the fair market value of like rolling stock, as the case may be, the fair market value, the fair market rental value, or the fair market value of like rolling stock, as the case may be, shall be the average of the amounts determined by each of the three appraisers.

5.5.6 If the provisions of paragraph 5.5.3 shall at any time apply and if either Lessor or Lessee shall fail to appoint an appraiser, the finding by the appraiser appointed by Lessee or by Lessor, as the case may be, shall be final and binding.

5.5.7 The fair market value, the fair market rental value, or the fair market value of like rolling stock whichever is applicable, as finally determined in accordance with the provisions of this Section 5.5 shall bear interest for the period, if any, from the date on which any Rolling Stock is, by the terms hereof required to be purchased by Lessee pursuant to the exercise of an option to purchase, the date of commencement of the extended term, or, if paragraph 1.1.1 (e) (B) shall have application, the date the Casualty Value is, by the terms hereof, required to be paid to Lessor, whichever is applicable, to the date of payment by Lessee at the Overdue Interest Rate calculated and compounded semi-annually.

ARTICLE VI - LESSEE'S COVENANTS

SECTION 6.1 - TO INDEMNIFY

6.1.1 Lessee shall indemnify Lessor against, and save Lessor harmless from, all loss, costs and damages of every nature and kind whatsoever sustained or suffered by

Lessor, or for which Lessor may be or become liable, and caused by, resulting from, arising from, occasioned by or in any way connected with:

- (a) the maintenance, repair, use, operation, possession, storage, delivery, return or other disposition of any Rolling Stock by Lessee or the ownership thereof by Lessor;
- (b) the condition of any Rolling Stock, including, without limitation, latent and other defects with respect thereto, whether or not discoverable by Lessor or Lessee provided, however, that subject to the provisions of paragraph 6.1.2 hereof, the provisions of this sub-paragraph 6.1.1(b) shall cease to apply to any Rolling Stock upon the sale or other disposition of that Rolling Stock by Lessor to any Person other than Lessee;
- (c) any act or failure to act by Lessee relating to any Rolling Stock;
- (d) any claim for patent, trade mark or copyright infringement in connection with any Rolling Stock;
- (e) any enforcement of any Warranty pursuant to the provisions of Section 5.4 hereof;
- (f) any personal injuries, death or property damage which may arise by reason of, result from, be caused by, or relate to the use, operation or ownership of any Rolling Stock and whether or not those injuries, death or property damage is due to, results from or is occasioned by the fault, neglect, imprudence or want of skill of Lessee, its servants or agents or otherwise; or
- (g) any fine or penalty arising out of the use, condition or operation of any Rolling Stock in violation of any law, regulation, rule, order, directive or ordinance of any Authority; or
- (h) the occurrence of an Event of Loss; or
- (i) any sub-lease, assignment, interchange or

other arrangement entered into by Lessee pursuant to Section 4.6 hereof, provided that Lessee shall not be required to indemnify Lessor for loss or liability resulting from:

- (i) the breach by Lessor of any warranty, term, provision or condition of this Agreement, or
- (ii) the misconduct or negligence of Lessor, its servants and agents.

6.1.2 Provided, however, and it is expressly agreed, that notwithstanding the termination of this Agreement, in whole or in part, whether by effluxion of time or otherwise, or the release or discharge from this Agreement of any Rolling Stock or the sale or other disposition of any Rolling Stock or the release or discharge of Lessee from the obligation to make Rental Payments hereunder, the provisions of this Section 6.1 shall, as to any act, matter or thing which shall have been done or have occurred or arisen prior to such termination, release or discharge as aforesaid, continue in full force and effect.

6.1.3 Lessee shall, upon the request of Lessor, assume, at its own expense, the defence of any action or proceeding against Lessor for, or in respect of, any act, matter, or thing set out in sub-paragraphs (a) to (i), inclusive, of paragraph 6.1.1 hereof.

6.1.4 It is expressly agreed that nothing in this Section 6.1 shall in any way alter, vary, affect, diminish or extinguish any right or recourse of Lessee or of Lessor against any Person under any Warranty and that Lessee shall indemnify Lessor in the manner contemplated in this Section 6.1 notwithstanding that Lessor or Lessee or both may proceed directly against any Person under any Warranty in respect of any act, matter or thing set out in paragraph 6.1.1 hereof.

SECTION 6.2 - TO PAY TAXES

6.2.1 Lessee shall duly and punctually pay all sales taxes, licence fees, business taxes, governmental levies and assessments of every nature and kind whatsoever, whether assessed, levied or imposed on Lessor or on Lessee or both, which may be or become payable at any time or from time to time upon, or in respect of, any Rolling Stock, this Agreement, Rental Payments, or any other payments to be made hereunder, save only taxes on the income or capital of Lessor.

SECTION 6.3 - TO KEEP FREE OF ADVERSE LIENS

6.3.1 Lessee shall forthwith give Lessor notice of any alleged Adverse Lien on any Rolling Stock of which Lessee may become aware and of Lessee's intended course of action with respect thereto.

6.3.2 Lessee shall keep the Rolling Stock free and clear of any and all Adverse Liens and, save as in Section 4.6 hereof provided, free and clear of all Temporary Liens, subject to the right of Lessee to contest in good faith, by appropriate proceedings, and with all due dispatch, any Adverse Lien or any Temporary Lien.

6.3.3 Lessee shall remove or discharge, or cause the removal or discharge of, any Permitted Lien which may at any time apply or attach to any Rolling Stock upon the occurrence of any event which causes, or has the effect of causing that Permitted Lien to cease to meet the requirements of paragraph 1.1.1(o) hereof but Lessee shall not be required to remove or discharge, or cause to be removed or discharged, any Permitted Lien if and for so long as Lessee shall be contesting that Permitted Lien in good faith, with all due dispatch and by appropriate proceedings.

SECTION 6.4 - TO MAINTAIN

6.4.1 Subject always to the provisions of Section 6.7 hereof, Lessee shall, at its sole expense maintain the

Rolling Stock in good and proper operating condition and repair.

SECTION 6.5 - TO GIVE FURTHER ASSURANCES

6.5.1 Lessee and Lessor shall each give such further assurances and do, execute and perform all such acts, deeds, documents and things as may be requisite to enable Lessor and Lessee respectively to have the full benefit of all rights and remedies intended to be reserved or created hereby.

SECTION 6.6 - TO FURNISH FINANCIAL INFORMATION

6.6.1 During the term hereof, Lessee shall deliver to Lessor, within 120 days from the end of each fiscal year of Lessee or as soon thereafter as the same may become available, Lessee's audited financial statements for such year.

SECTION 6.7 - TO COMPLY WITH GOVERNMENTAL REQUIREMENTS

6.7.1 Lessee shall not maintain, use or operate any Rolling Stock in violation of any law or any rule, regulation or order of any Authority or in violation of any certificate, licence or registration relating to the Rolling Stock issued by any Authority.

6.7.2 Lessee shall, at its sole expense, comply with all laws, regulations, rules, orders, directives and ordinances made by any Authority relating to the Rolling Stock, to the use, operation or possession of the Rolling Stock or the ownership thereof by Lessor.

6.7.3 In the event that such laws, rules, regulations or orders shall at any time require alteration of any Rolling Stock, Lessee, at its expense, shall conform thereto before using that Rolling Stock and will maintain the same in proper operating condition under such laws, rules, regulations and orders, provided, however, that upon obtaining

the prior written consent of Lessor, which will not be unreasonably withheld, Lessee may, in good faith, and with all due diligence and dispatch contest by appropriate proceedings the validity or application of any such law, rule, regulation or order in any reasonable manner which does not, in Lessor's opinion, materially adversely affect Lessor or involve any danger of sale, forfeiture or loss of that Rolling Stock or affect any insurance thereon.

SECTION 6.8 - TO INSURE IN CERTAIN CASES

6.8.1 If and for so long as Lessee shall assume liability for loss of, or damage to, the Rolling Stock and for injury to persons or damage to property caused by the Rolling Stock to the same extent, in the same manner and according to the same policies and practices as on the commencement date of the term hereof and as represented to Lessor and shall agree to indemnify and save harmless Lessor as provided in Section 6.1 hereof, Lessee shall be deemed to have complied with this Section 6.8.

6.8.2 If the provisions of paragraph 6.8.1 hereof shall cease to prevail or if Lessee shall with or without the written permission of Lessor assign its rights hereunder and in the Rolling Stock to any Person other than one of the National Railways, as that expression is used in the Canadian National Railways Act (R.S.C. 1970 C.10) or other than any corporation that is a subsidiary of, related to or affiliated with, Lessee, Lessee or Lessee's assign shall, at its sole expense:

(a) insure the Rolling Stock for those amounts and in respect of those risks and perils as would be expected to be insured against by a prudent owner thereof and for such other amounts and against such other risks and perils as Lessor may at any time specify, and

(b) place and maintain insurance against liability imposed by law for injury to, or death of, persons, or damage to or destruction of, property to the extent of not less than five million dollars (\$5,000,000.00) or any other amount that Lessor at any time and from time to time reasonably requires, for any such liability arising out of each occurrence.

6.8.3 All policies of insurance shall cover and protect Lessor and Lessee as their respective interests may appear and, where necessary, shall include both Lessor and Lessee as named insureds, shall provide that loss is payable to Lessor and Lessee as their respective interest may appear, and shall contain such endorsements as Lessor may from time to time reasonably require.

6.8.4 Lessee shall, where requested by Lessor, supply Lessor with evidence, satisfactory to Lessor, that the foregoing coverage is in force and effect.

6.8.5 Effecting or obtaining insurance pursuant to this Section 6.8 does not excuse or relieve Lessee from the due performance and fulfilment of any of its obligations hereunder.

6.8.6 Lessee shall deliver to Lessor, at least fifteen (15) days before the expiry and at least seven (7) days before the cancellation of any policy or policies of insurance carried pursuant to this Section 6.8, evidence satisfactory to Lessor of the renewal or replacement thereof.

SECTION 6.9 - TO MAINTAIN RECORD

6.9.1 Lessee shall forward to Lessor annually commencing on December 1, 1976 throughout the initial term and, if applicable, throughout the first extended term and the second extended term a statement which shows:

- (a) the number of units, description and road numbers of the Rolling Stock leased hereunder,
- (b) the number of units, description and road numbers of any Rolling Stock in respect of which an Event of Loss shall have occurred,
- (c) the number of units, description and road numbers of any Replacement Rolling Stock,
- (d) the name and address of any sub-lessees, assignees or other Persons to whom use of any Rolling Stock shall have been entrusted or to whom any Rolling Stock shall have been sublet, and
- (e) the number of units, description and road numbers of any Rolling Stock sublet or entrusted to the use of sub-lessees, assignees or other Persons.

ARTICLE VII LESSOR'S COVENANTS AND RIGHTS

SECTION 7.1 - QUIET ENJOYMENT

7.1.1 Lessor covenants that if and so long as Lessee keeps and performs each and every covenant, condition or agreement to be performed or observed by it hereunder, Lessee shall quietly enjoy the Rolling Stock without hindrance or molestation by Lessor, and, subject to the other terms and conditions of this Agreement, Lessee shall have the absolute direction and control of the Rolling Stock.

SECTION 7.2 - NOT TO SUBJECT THE ROLLING STOCK TO AN ADVERSE LIEN

7.2.1 Lessor will not do any act or omit to perform any act which would subject any Rolling Stock to an Adverse Lien.

SECTION 7.3 - RIGHT TO INSPECT

7.3.1 Lessor, or the representatives of Lessor, shall have the right to inspect any Rolling Stock at any

reasonable time upon reasonable notice to Lessee and Lessee shall cooperate fully with Lessor and with Lessor's representatives in the conduct of any such inspection.

7.3.2 Lessor may, upon notice to Lessee, at any reasonable time, inspect and make written extracts from the books and records of Lessee relating to the Rolling Stock or this Agreement.

7.3.3 Nothing in this Section 7.3 shall impose any duty or obligation on Lessor to make any inspection referred to herein nor shall Lessor assume or be deemed to have assumed any liability by reason of Lessor not having made any such inspection.

ARTICLE VIII - DEFAULT

SECTION 8.1 - EVENTS OF DEFAULT

8.1.1 The occurrence of any of the following events constitutes an Event of Default:

(a) if Lessee shall fail to observe and perform, or shall commit any act in breach of any Obligation and if such failure or act in breach shall continue for thirty (30) days after Lessor shall have given notice to Lessee requiring Lessee to cure such default but nothing in this sub-paragraph 8.1.1(a) shall have or be deemed to have the effect of extending time to Lessee to observe and perform any Obligation,

(b) if Lessee shall fail to observe and perform or shall commit any act in breach of any term, condition or provision of this Agreement which would materially adversely affect Lessor or involve any danger of sale, forfeiture, loss, seizure or confiscation of any Rolling Stock,

(c) if any representation or warranty made by Lessee herein or pursuant hereto shall at any time

prove to have been incorrect in any material respect at the time it was made,

(d) if Lessee shall voluntarily suspend all or a substantial portion of its operations other than suspensions of a temporary nature resulting from a strike or a similar event not within the control of Lessee,

(e) if Lessee shall make any assignment for the general benefit of its creditors or be adjudged bankrupt within the meaning of The Bankruptcy Act of Canada or any amending or replacing legislation,

(f) if any proposal is made or petition filed by Lessee under any law having for its purpose the extension of time for payment, composition or compromise, of the liabilities of Lessee,

(g) if any judgment or order is given by any court of competent jurisdiction ordering the winding-up or other liquidation of Lessee,

(h) if a petition or other application is made for a receiving order against, or for the winding-up of, Lessee,

(i) if any execution, sequestration or any other similar process of any court of competent jurisdiction becomes and remains enforceable against, or if a distress or analogous process is levied upon, the property of Lessee or any part thereof,

(j) if any receiver, administrator or manager of the property, assets or undertaking of Lessee is appointed pursuant to the terms of any trust deed, trust indenture, debenture or similar instrument or by or under any judgment or order of any court, or

(k) if all or substantially all the Rolling Stock is seized under legal process, confiscated, sequestered or attached or if distress is levied thereon and that seizure, confiscation, sequestration or

attachment is not based upon or does not result from, any claim by any Person against Lessor which Lessee is not, under the provisions of this Agreement, required to discharge or is not based upon or does not result from any act or omission on the part of Lessor.

8.1.2 The occurrence of any event described or referred to in any of the foregoing sub-paragraphs (g), (h), (i), (j) or (k) will not constitute an Event of Default if, and for so long as, Lessee contests in good faith with all due diligence and dispatch and by appropriate proceedings, that event or the occurrence thereof and Lessee provides, at the request of Lessor made by notice to Lessee, a Bond in respect of any loss, cost or damages which Lessor might sustain or for which Lessor might be, or become liable, by reason of such event or the occurrence thereof or the contestation thereof by Lessee.

ARTICLE IX - REMEDIES ON DEFAULT

SECTION 9.1 - TO TAKE POSSESSION OF ROLLING STOCK, SELL AND CLAIM DAMAGES

9.1.1 Upon the occurrence or happening of an Event of Default hereunder Lessor may:

(a) by notice to Lessee, require Lessee to return the Rolling Stock to Lessor in accordance with the provisions of Section 4.7 hereof,

(b) if Lessee does not return the Rolling Stock, take possession of the Rolling Stock without demand or notice, wherever the same may be located, without any court order or other process of law, Lessee hereby waiving any and all damages occasioned by such taking of possession, and release, sell or otherwise dispose of that Rolling Stock for the best price and upon the best terms

and conditions as shall be available to Lessor;
and

(c) demand, by notice to Lessee, payment of
liquidated damages in the amount produced by:

(i) calculating the sum of the then
unpaid Rental Payments for the
remainder of the initial term
hereof or the remainder of the
first extended term or of the
second extended term, whichever is
applicable for the time being, each
Rental Payment to be discounted to
a present value as at the earlier
of the date of return by Lessee of
that Rolling Stock, the taking of
possession of that Rolling Stock or
the date of the said notice, employ-
ing in such discounting an assumed
rate of five percent (5%) per annum
calculated and compounded semi-
annually; and

(ii) subtracting from the sum calculated
according to sub-paragraph (i) the
proceeds of the re-leasing, sale or
other disposition of the Rolling
Stock which remain after Costs of
Disposition have been deducted,

which calculations are conclusively deemed to
produce a sum which represents a genuine pre-
estimate by Lessor and Lessee of damages which
would be suffered by Lessor in the circumstances,
and not a penalty; and

(d) proceed to recover the liquidated damages
together with interest thereon at the Overdue
Interest Rate calculated and compounded semi-
annually, computed from the date of the notice

referred to in sub-paragraph 9.1.1(b) hereof until paid, and together with all monies payable by Lessee hereunder.

SECTION 9.2 - LESSOR'S OPTION TO TERMINATE

9.2.1 Lessee agrees that neither this Agreement nor any interest herein or in any Rolling Stock is assignable or transferable by operation of law and that if any Event of Default described in paragraph 8.1.1 hereof occurs Lessor, at its option exercisable by notice to Lessee, may end and terminate forthwith, this Agreement, without terminating or affecting any right or remedy hereunder which had arisen prior to the termination and whereupon neither this Agreement, any Rolling Stock nor any interest hereunder or therein, will be an asset of Lessee.

9.2.2 Upon any termination by Lessor of this Agreement pursuant to the foregoing paragraph 9.2.1, Lessee on notice from Lessor, shall return the Rolling Stock to Lessor in accordance with the provisions of Section 4.7 hereof.

SECTION 9.3 - REMEDYING DEFAULTS

9.3.1 If Lessee shall fail to observe and perform, or shall do any act in breach of, any Obligation, Lessor, in its discretion, may do all such acts and make all such disbursements as may be necessary to make good any such failure or breach, and any disbursements so made by Lessor shall be payable by Lessee on demand.

SECTION 9.4 - REMEDIES CUMULATIVE

9.4.1 All rights and remedies of Lessor hereunder are cumulative and not alternative and may be exercised by Lessor separately or together, in any order, sequence or combination.

SECTION 9.5 - COSTS AND DISBURSEMENTS

9.5.1 All fees, costs and disbursements of every

nature and kind whatsoever (including, without limiting the generality of the foregoing, solicitors' costs as between solicitor and own client) which may, at any time or from time to time, be incurred by Lessor or for which Lessor may be or become liable in connection with the enforcement of any term, condition or provision of this Agreement or occasioned by or connected with the breach or nonfulfillment by Lessee of any Obligation shall be the liability of Lessee and shall be payable on demand.

SECTION 9.6 - NO MERGER IN JUDGMENT

9.6.1 The taking of any judgment hereunder shall not operate as a merger of any term, condition or provision hereof.

ARTICLE X - WAIVERS

SECTION 10.1 - CONDITIONAL SALES ACT AND SEIZURES ACT - ALBERTA

10.1.1 To the extent permitted by law, LESSEE DOES HEREBY WAIVE all the rights, benefits or protection given to it by The Conditional Sales Act and the Seizures Act of the Province of Alberta, insofar as they extend to or relate to this Agreement, or other security collateral hereto.

10.1.2 LESSEE DOES HEREBY ACKNOWLEDGE that seizure or repossession of any Rolling Stock shall not, by implication of law, extinguish Lessee's indebtedness under this Agreement, or under any other collateral security hereto.

10.1.3 LESSEE DOES HEREBY CONFER upon Lessor the right to recover from Lessee by action on covenant for payment contained herein, or in any security collateral hereto, the full amount of the rent and other monies payable under this Agreement, or under any other collateral security hereto, notwithstanding any seizure or repossession.

SECTION 10.2 - CONDITIONAL SALES ACT - BRITISH COLUMBIA

10.2.1 Lessee waives to the extent permitted, all of the rights, benefits and protection given by Sections 14, 14A, 14B and 14C of the Conditional Sales Act of the Province of British Columbia.

SECTION 10.3 - LIMITATION OF CIVIL RIGHTS ACT - SASKATCHEWAN

10.3.1 Lessee covenants and agrees with Lessor that The Limitation of Civil Rights Act of the Province of Saskatchewan does not apply to:

- (a) this Agreement,
- (b) any mortgage, charge or other security for the payment of money, made, given or created by this Agreement or any agreement or instrument collateral hereto,
- (c) any agreement or instrument renewing or extending or collateral to any mortgage, charge or security referred to or mentioned in sub-paragraph (b) of this paragraph 10.3.1, or
- (d) the rights, powers or remedies of Lessor, under this Agreement or under any mortgage, charge, other security, agreement or instrument referred to or mentioned in sub-paragraphs (b) or (c) of this paragraph 10.3.1.

SECTION 10.4 - CIVIL CODE - QUEBEC

10.4.1 Lessee agrees that the provisions of the Civil Code of the Province of Quebec respecting the leasing or hiring of things do not apply to this Agreement, or the rights, liabilities and recourses of Lessee hereunder.

SECTION 10.5 - GENERAL WAIVER

10.5.1 To the extent permitted by applicable law, Lessee hereby waives any rights now or hereafter conferred by any other statute or otherwise with respect to the repossession or sale or other disposition by Lessor of the Rolling Stock, the limitation, prohibition against the enforcement

of, modification or other affectation of any of Lessor's rights, remedies and recourses under this Agreement.

ARTICLE XI - MISCELLANEOUS PROVISIONS

SECTION 11.1 - SUCCESSORS AND ASSIGNS

11.1.1 This Agreement enures to the benefit of Lessor and Lessee, their respective successors, administrators and assigns, and is binding upon Lessor and Lessee and their respective administrators, successors and assigns. Every reference in any provision hereof to Lessor extends to and includes the successors, administrators and assigns of Lessor and every reference herein, to Lessee, extends to and includes the administrators, successors and permitted assigns of Lessee, in either case to the same extent and effect as if such administrators, successors, assigns or permitted assigns, as the case may be, were specifically named in such provision.

SECTION 11.2 - FORBEARANCE AND INDULGENCE

11.2.1 No term, condition or provision hereof or any right hereunder or in respect hereof can be, or shall be deemed to have been, waived by Lessor or by Lessee, except by express waiver in writing signed by Lessor or by Lessee, as the case may be.

11.2.2 Neither forbearance nor indulgence by Lessor or by Lessee constitutes a waiver of:

- (a) any term, condition or provision to be performed or observed by Lessee or by Lessor respectively, or
- (b) any want of performance or observance thereof.

SECTION 11.3 - HEADINGS

11.3.1 Article and Section headings appearing in this Agreement are inserted for ease of reference only, do

not constitute a part hereof, and are not to be considered as an aid to interpretation hereof.

SECTION 11.4 - EFFECTIVE DATE

11.4.1 Notwithstanding the actual date of execution hereof, this Agreement shall have force and effect and shall bind Lessor and Lessee as and from the date first hereinabove written.

SECTION 11.5 - ENTIRE TRANSACTION

11.5.1 This Agreement represents the entire transaction between Lessor and Lessee relating to the subject matter.

11.5.2 No agreement purporting to amend or modify this Agreement or any document, paper or writing relating hereto or connected herewith, is valid and binding unless in writing and signed and accepted in writing by both Lessor and Lessee.

SECTION 11.6 - SEVERABILITY

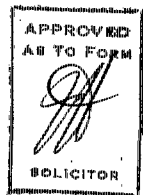
11.6.1 Any term, condition or provision of this Agreement which is, or is deemed to be, void, prohibited or unenforceable in any jurisdiction is, as to such jurisdiction, severable herefrom, is ineffective to the extent of such avoidance, prohibition and unenforceability without in any way invalidating the remaining terms, conditions and provisions hereof, and any such avoidance, prohibition and unenforceability in any jurisdiction does not invalidate or render unenforceable such term, condition or provision in any other jurisdiction.

SECTION 11.7 - PROPER LAW

11.7.1 This Agreement is deemed to have been made in the Province of Quebec and the rights and liabilities of the parties hereunder are governed and construed by and in

accordance with the laws of such Province and this Agreement is deemed to be in all respects a contract of such Province.

IN WITNESS WHEREOF LESSOR AND LESSEE HAVE EACH EXECUTED THIS AGREEMENT AND HAVE HEREUNTO AFFIXED THEIR RESPECTIVE CORPORATE SEALS ON THE 26th DAY OF November, 1975 AND ON THE 1st DAY OF December, 1975 RESPECTIVELY OVER THE HANDS OF THEIR RESPECTIVE PROPER SIGNING OFFICERS DULY AUTHORIZED IN THAT BEHALF.



CANADIAN NATIONAL RAILWAY COMPANY

Per: [Signature] **VICE-PRESIDENT**

and: [Signature]

ASSISTANT SECRETARY

IAC LIMITED

Per: [Signature]

and: [Signature] **VICE-PRESIDENT**

ASSISTANT VICE-PRESIDENT

SCHEDULE "A"
TO LEASE AGREEMENT BETWEEN
CANADIAN NATIONAL RAILWAY COMPANY
AND IAC LIMITED DATED AS OF
DECEMBER 1, 1975

<u>RELEVANT PERIOD</u>	<u>PERCENTAGE</u>	
First	100.00	%
Second	99.75	%
Third	98.00	%
Fourth	95.00	%
Fifth	91.00	%
Sixth	86.00	%
Seventh	81.00	%
Eighth	75.00	%
Ninth	68.00	%
Tenth	60.00	%
Eleventh	52.00	%
Twelfth	43.00	%
Thirteenth	33.50	%
Fourteenth	23.00	%
Fifteenth	12.00	%

Signed for identification:



CANADIAN NATIONAL RAILWAY COMPANY

Per: [Signature] ~~VICE-PRESIDENT~~

and: [Signature]

ASSISTANT SECRETARY

IAC LIMITED

Per: [Signature]

and: [Signature] ~~VICE-PRESIDENT~~

ASSISTANT VICE-PRESIDENT

SCHEDULE "B"
TO LEASE AGREEMENT
BETWEEN CANADIAN NATIONAL RAILWAY COMPANY
AND IAC LIMITED DATED AS OF DECEMBER 1, 1975

<u>No. of Units</u>	<u>Description of Rolling Stock</u>	<u>Unit Acquisition Cost</u>	<u>Total</u>
309	<p>70-ton 50 ft. 6 inch steel sheathed wood lined box cars with 12 ft. door bearing road numbers CN- 411400 to CN-411518 inclusive and CN-411710 to CN-411899 inclu- sive, built in accordance with the following specifi- cations:</p> <p>(a) CN specification number F-30-18 dated November - December 1972;</p> <p>(b) general arrangement drawing 9H-37887-A dated December 12, 1972; and</p> <p>(c) general specification number SS-1974 dated January 1974</p> <p>and falling within Class XM established by the Association of American Railroads.</p>	\$ 22,902.14	\$ 7,076,761.26
102	<p>100-ton steel covered hopper cars having 4 roof hatches, 4 hopper doors and centre dump bearing road numbers CN-371600 to CN-371701 inclusive built in accor- dance with the following specifications:</p> <p>(a) CN specification number F-70-18 dated May, 1973;</p> <p>(b) general arrangement drawing number 9H-39127-A dated May 10, 1973; and</p> <p>(c) general specification number SS-1974 dated January 1974</p> <p>and falling in Class LO established by the Associa- tion of American Railroads.</p>	\$ 25,860.00	\$ 2,637,720.00

[Handwritten signature]

4 100-ton gondola coal cars
with fixed sides and ends
bearing road numbers CN-199290
to CN-199293 inclusive built
in accordance with the following
specifications:

(a) CN specification number
F-60-11 dated October 1973:

(b) general arrangement drawing
9H-37046-E dated February 12, 1969;
and

(c) general specification number
SS-1974 dated January 1974
and falling within Class
GT established by the
Association of American
Railroads.

\$ 25,127.20

\$ 100,508.80

32 100-ton gondola cars
with fixed sides and fixed
ends bearing road numbers
CN-188100, CN-137550,
CN-137551, CN-137553 to CN-137560
inclusive, CN-137700, CN-
137701, CN-137703, CN-
137807 to CN-137820
inclusive, CN-137822, CN-
137823, CN-137825 and
CN-137826 built in accor-
dance with the following
specifications:

(a) CN specification
number F-60-10 dated
October 1972;

(b) general arrangement
drawing 9H-37831-A dated
October 31, 1972; and

(c) general specification
number SS-1974 dated January
1974.

and falling in Class GB
established by the Association
of American Railroads

\$ 24,121.25

\$ 771,880.00

3 GP-40-2 4 axle, 4 motor
diesel locomotives rated
at 3,000 horsepower
bearing road numbers CN-
9488 to CN-9490 inclusive

and built in accordance
with General Motors speci-
fication number 8091 dated
January 23, 1972 and CN
specification No. R-30-36-S
dated May, 1973

\$400,993.60

\$ 1,202,980.80

3 GP-40-2 4 axle, 4 motor
diesel locomotives rated
at 3,000 horsepower
bearing road numbers CN-
9491 to CN-9493 inclu-
sive and built in accor-
dance with General Motors
specification number 8091
dated January 23, 1972 and
CN specification No. R-30-
36-S Dated May, 1973

\$402,589.60

\$ 1,207,768.80

25 GP-40-2 4 axle, 4 motor
diesel locomotives rated
at 3,000 horsepower
bearing road numbers CN-
9494 to CN-9518 inclusive
and built in accordance
with General Motors speci-
fication number 8091 dated
January 23, 1972 and CN
specification No. R-30-36-S
dated May, 1973.

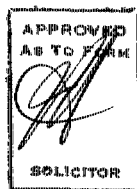
\$402,589.60

\$10,064,740.00

AGGREGATE ACQUISITION COST:

\$23,062,359.66

Signed for Identification:



CANADIAN NATIONAL RAILWAY COMPANY

Per: [Signature]
Vice-President

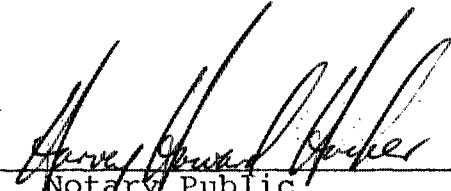
and: [Signature]
ASSISTANT SECRETARY

IAC LIMITED

Per: [Signature]
VICE-PRESIDENT
and: [Signature]
ASSISTANT VICE-PRESIDENT

C A N A D A)
)
PROVINCE OF ONTARIO) SS
)
CITY OF TORONTO)

On this *26th* day of *November*, 1975, before me personally appeared *G.C. Clerk*, to me personally known, who being by me duly sworn, says that he is **ASSISTANT VICE-PRESIDENT** of IAC LIMITED, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors; and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.



Notary Public

(SEAL)

C A N A D A)
)
PROVINCE OF QUEBEC) SS
)
DISTRICT OF MONTREAL)

On this 1st day of December, 1975, before me personally appeared E. J. Demyar, to me personally known, who being by me duly sworn, says that he is a

~~Vice-President~~ of CANADIAN NATIONAL RAILWAY COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors; and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

(SEAL)



~~Notary Public~~

R. G. Jenkins,

Commissioner for Oaths

Commissaire à l'Assermentation

District - Montreal

Expires

June 11 1977